

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		CIV-06-1157 L
Name (under which you were convicted): Hershell Jones		Docket or Case No.: 342164
Place of Confinement: Oklahoma State Penitentiary		Prisoner No.: 342164
Petitioner (include the name under which you were convicted) Hershell Jones		Respondent (authorized person having custody of petitioner) v. States of Oklahoma
The Attorney General of the State of Oklahoma		FILED OCT 19 2006

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY *[Signature]* DEPUTY

1. (a) Name and location of court that entered the judgment of conviction you are challenging: Oklahoma County
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-
- (b) Criminal docket or case number (if you know): CF-2000-3604-CF-2000-3941
2. (a) Date of the judgment of conviction (if you know): November 19, 2001
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- (b) Date of sentencing: December 20, 2001
3. Length of sentence: Life without Parole and 45 yr cc 20yr 20yr
4. In this case, were you convicted on more than one count or of more than one crime? Yes No
5. Identify all crimes of which you were convicted and sentenced in this case: Murder in the First Degree
Robbery with Dangerous weapon, Assault and Battery with A Dangerous weapon
Burglary in the Second Degree
-
-
6. (a) What was your plea? (Check one)

(1) Not guilty <input type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input checked="" type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>
-
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? I plead guilty to Assault and Battery with a Dangerous weapon, I plead not guilty to Murder in the first Degree, Robbery with Dangerous weapon, Burglary in the Second Degree

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following:

(a) Name of court: In the District Court of Oklahoma, In the Court of Criminal Appeal

(b) Docket or case number (if you know): CF-20003604-CF-2000-3941

(c) Result: Denied

(d) Date of result (if you know): June 7, 2002

(e) Citation to the case (if you know): Jones v. State CF-2002-10

(f) Grounds raised: (4) Guilty Plea with Withdrawal of Guilty Plea

Ineffective Assistance of Counsel

Not Competent to Stand Trial

In Effective Assistance of Counsel

(g) Did you seek further review by a higher state court? Yes No

If yes, answer the following:

(1) Name of court: In the Court of Criminal Appeal

(2) Docket or case number (if you know): Appellate Case No-C-2002-10

(3) Result: Denied

(4) Date of result (if you know): June 7, 2002

(5) Citation to the case (if you know): Jones v. State C-2002-10

(6) Grounds raised: (4) Guilty Plea with Withdrawal of Guilty Plea

Ineffective Assistance of Counsel

not Competent to Stand Trial

In Effective Assistance of Counsel

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Court of Criminal Appeal of Oklahoma(2) Docket or case number (if you know): Appellate case no C-2002-10(3) Date of filing (if you know): April 26, 2002(4) Nature of the proceeding: Appellate Brief of Petition(5) Grounds raised: (4) Guilty Plea with Withdrawal of Guilty PleaIneffective Assistance of CounselNot Competent to Stand trialIneffective Assistance of Counsel

- (6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No (7) Result: N/A(8) Date of result (if you know): N/A

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: In the District court of Oklahoma County(2) Docket or case number (if you know): CF-2000-3941-CF-2000-3604(3) Date of filing (if you know): Jan 12, 2006(4) Nature of the proceeding: Application for Post-Conviction Relief(5) Grounds raised: (4) Guilty Plea with Withdrawal of Guilty PleaIneffective Assistance of CounselNot Competent to Stand trialIneffective Assistance of Counsel

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: Denied

(8) Date of result (if you know): March 7, 2006

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Court of Criminal Appeal State of Oklahoma

(2) Docket or case number (if you know): CF-2000-3941-CF-2000-3604

(3) Date of filing (if you know): March 31, 2006 C-2006-347

(4) Nature of the proceeding: Petition of errand Brief

(5) Grounds raised: ④ Guilty Plea with Withdrawal of Guilty plea

Ineffective Assistance of counsel

Not Competent to stand trial

Ineffective Assistance of counsel

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes No

(7) Result: Denied

(8) Date of result (if you know): May 15, 2006

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No

(2) Second petition: Yes No

(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Guilty Plea Withdrawal of Guilty Plea

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

8th grade - low I.Q., suffers from learning disorder
pressured by trial counsel advisement to take guilty
plea to Count 3: Robbery with D

- (b) If you did not exhaust your state remedies on Ground One, explain why:
-
-
-

(c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

- (2) If you did not raise this issue in your direct appeal, explain why:
-
-

(d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-Conviction

Name and location of the court where the motion or petition was filed: In the District Court of
Oklahoma County State of Oklahoma

Docket or case number (if you know): CF-2000-3941-CF-2000-3604

Date of the court's decision: Mar 2, 2006

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: In the Oklahoma Court of Criminal Appeals

Docket or case number (if you know): PC-2006-347

Date of the court's decision: May 15, 2006

Result (attach a copy of the court's opinion or order, if available): See attach

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial Counsel failed to orchestrate either trial strategy defense or pursue investigation of witnesses

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-conviction Motion

Name and location of the court where the motion or petition was filed: Oklahoma County

Docket or case number (if you know): Cf-2000-3604 - Cf-2000-3941

Date of the court's decision: Mar 15, 2006

Result (attach a copy of the court's opinion or order, if available): See attach

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: Not Competent to stand Trial

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Evidence exists which creates a genuine, reasonable doubt about the Defendant's Competence
Defendant's low I.Q., 8th grade education
learning disorder irrational and sporadic demeanor

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Find w/o certiorari

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction

Name and location of the court where the motion or petition was filed: Oklahoma County

Oklahoma Court of Criminal Appeal

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

Yes No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Oklahoma County

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial counsel erred when it failed to construct a strategic defense, nor investigate potential witnesses; when it ill-advised Defendant as to which charge he was actually entering his plea of guilty to when it failed to motion when it failed to raise appropriate speedy trial violation of the Defendant, by the state's delay of one and a half years to obtain disposition on of charges Appellate Counsel assigned to same public Defender's Office as Trial Counsel, could not demonstrate a genuine representation of Defendant in Appeal torgo, Ineffective assistance of trial Counsel due to a conflict of interest.

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes No

(2) If you did not raise this issue in your direct appeal, explain why: Find writ of certiorari

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post-conviction

Name and location of the court where the motion or petition was filed: Oklahoma County District Court, Court of Criminal Appeal of Oklahoma

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

No

(4) Did you appeal from the denial of your motion or petition?

Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Oklahoma County Dist Ct Court

Docket or case number (if you know): I don't know in view of direct Appeal

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: Petitioner does not know or completely understand the Merit's of law on his Right under the Law.

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Catherine Hammarsten

(b) At arraignment and plea: Catherine Hammarsten

(c) At trial: Catherine Hammarsten

(d) At sentencing: Catherine Hammarsten

(e) On appeal: Carolyn Merritt
Gint K. Walker

(f) In any post-conviction proceeding: Mr Randy Lewis - Inmate

(g) On appeal from any ruling against you in a post-conviction proceeding: Pro 'se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

Oklahoma County District Court

(b) Give the date the other sentence was imposed: Dec 19, 2001

(c) Give the length of the other sentence: Liu, S. P., 20 yr 20 yrs cc, 45 yr.

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

UVA

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

Acute sentence
Remand for new trial

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on
10-17-06 (month, date, year).

Executed (signed) on Hershel Jones 10-17-06 (date).

Hershel Jones

Signature of Petitioner

GUIDELINES FOR COMMENCING ACTIONS IN FORMA PAUPERIS

The following guidelines have been compiled to assist pro se litigants with the prosecution or defense of civil actions filed in this Court. These guidelines are very general and are not intended to provide legal advice or to answer every question of a pro se litigant. The procedures set forth in the Local Rules and the Federal Rules of Civil Procedure must be followed. Copies of the Local Rules can be obtained free of charge from the Clerk's Office.

1. **Filing Fee:** If you are unable to prepay the filing fee (\$250.00 for all civil suits except habeas corpus actions, which require a \$5.00 fee), you may file an application to proceed *in forma pauperis* - that is, without prepayment of the full filing fee. The application must be on the form approved and provided by this Court. In the case of incarcerated persons seeking to proceed *in forma pauperis*, the application must include a certified copy of his/her trust fund institutional account for the six-month period immediately preceding the filing of the action or appeal.

Even if a motion to proceed *in forma pauperis* is granted, a prisoner must pay the full amount of the filing fee. In all prisoner actions except in petitions for writ of habeas corpus, the Court shall collect the filing fee as follows:

Initial partial payment - The prisoner shall be required to pay as an initial partial payment 20% of the greater of:

- (1) The average monthly deposits in the prisoner's account; or
- (2) The average monthly balance in the prisoner's account for the six month period immediately preceding the filing of the complaint/petition or notice of appeal.

Failure to pay the initial partial filing fee within 20 days or to show cause in writing for such failure shall subject the action to dismissal without prejudice to refiling. After the initial partial payment is made, the Court will order the prisoner's custodian to make monthly payments to the Clerk of the Court in the amount of 20% of the preceding month's income credited to the prisoner's account each time the amount in the account exceeds \$10.00. Interference by a prisoner with the payment of these funds shall result in the dismissal of the action.

All copies requested are \$.25 cents each, excluding current month, PLUS \$1.19 per copy for labor. Total cost per copy is \$1.44 for each of the previous 12 months. Additional charges will apply for any copies over 1 year old. If you still wish to receive a copy of your statement(s), please fill out a Disbursement Request Form and sign the disbursement, acknowledging acceptance of charges for copies. You may only request copies if you have the funds on your draw to pay for them.

2. **Dismissal**. Notwithstanding any filing fee or portion thereof that may have been paid, the Court shall dismiss at any time all or any part of any complaint/petition which (1) is frivolous or malicious; (2) fails to state a claim on which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief.
3. **Prior Actions**: A prisoner may not bring a civil action or appeal a judgment in a civil action *in forma pauperis* if while detained or incarcerated he has brought three or more actions which were dismissed as frivolous, malicious or which fail to state a claim upon which relief could be granted, unless the prisoner is under imminent threat of serious physical injury.
4. **Habeas Corpus**: The procedures set forth above with respect to collection of the filing fee do not apply to habeas corpus actions. However, the court may, in its discretion, deny *in forma pauperis* status to a habeas petitioner if the money and securities in his institutional accounts are sufficient to pay the full \$5.00 filing fee. Further, if the Court grants a habeas petitioner's motion but determines that the petitioner can make partial payments of the \$5.00 filing fee, the Court may require monthly payments in a reasonable amount until the entire filing fee is paid. Failure to make timely payments as ordered by the Court may result in the dismissal of the habeas action.